IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

MFA.No. 631 of 2001()

WCC.272/1997 of COMMISSIONER FOR WORKMEN'S COMPENSATION ,THRISSUR .
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APPELLANT: 2ND OPPOSITE PARTY

THE ORIENTAL INSURANCE CO.LTD., THRISSUR, REP.BY ITS DEPUTY MANAGER, REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI 18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.JACOB MATHEW. K

RESPONDENTS: APPLICANT/ RESPONDENT/1ST OPPOSITE PARTY
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1. HARIDAS, S/O. PADMANABHAN, KUZHUTHUPARAMBIL HOUSE, RESIDING AT POYYA DESOM & VILLAGE, POYYA P.O., KODUNGALLUR TALUK.

2. V.N.GOPI, VALLOOPARAMBIL HOUSE, MALA- PALLIPPURAM P.O., KODUNGALLUR TALUK.

BY ADV. SRI.P.V.BABY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.FA. NO.631/2001

ORDER ON CMP. NO. 5303/2001 IN MFA.631/2001

DISMISSED

10.08.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- V.GIRI, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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J.B.KOSHY & V. GIRI, JJ.

M.F.A.No.631 of 2001

Dated this the 10th day of August, 2007.

JUDGMENT

Koshy, J.

A 32 year old Auto rickshaw driver met with an accident during the course of employment. He filed an application for compensation under the Workmen's' Compensation Act claiming a compensation of Rs.2,44,620/-. The tribunal awarded a sum of Rs.1,11,213/- assessing 45% loss of earning capacity. The quantum of compensation is questioned by the insurance company. The coverage of insurance policy is not disputed. The accident and other averments are also not disputed. According to the claimant, his monthly income was Rs.3,000/-. Considering the fact that he was an auto rickshaw driver, that was accepted. But, at the time of accident, i.e. 30.3.1997, the maximum monthly income that can be taken was only Rs.2,000/- and that was taken by the tribunal. In Ext.A1 certificate, which was issued immediately after the accident, shows that he was admitted in the Medical College Hospital for treatment and he has got 5% physical disability. But, during the course of treatment, the tip of the 3rd finger was amputated.

Thereafter, he was examined by several surgeons and an orthopedic surgeon of Taluk Hospital, Chalakudy. He was an orthopedic surgeon and he has issued Ext.A2 certificate which shows the following injuries:

> ***"1) Loss of tip of left mid finger with malformed nail and painful neuroma formation.***
>
> ***2) Stiffness of 4th and 5th fingers due to partial ankylosis at the DIP joints with only a jog of movement possible.***
>
> ***3) Weak grip.***
>
> ***Functionally, he has difficulty for to grip strongly, hold strongly to pull or push with left hand. He has difficulty to hold steering wheel or lift with left hand. He is assessed to have a permanent disability of 13% (Thirteen) and loss of earning capacity of 45% (forty five) as driver."***

2. He also gave evidence saying that in view of the loss of grip, he is unable to drive auto rickshaw. According to him, he is entitled compensation for 100% disability. He cannot drive auto rickshaw. That was not accepted by the Commissioner. What is important is not the physical capacity. What has to be considered by the Commissioner is the loss of earning capacity. It is contended that in the schedule to the

Workmen's Compensation Act, the compensation for amputation of fingers are mentioned. But here, apart from amputation, two other injuries also i.e. losing of grip and stiffness on other fingers for driving the auto rickshaw. Section 4(1)(2)(ii) states that the Commissioner has to assess the earning capacity on the basis of loss of earning capacity as early as by a qualified medical practitioner. Here the orthopedic medical practitioner has assessed the loss of earning capacity at 45%. The Commissioner as accepted the above and calculated the compensation for 45% disability. In the above circumstances, there is no substantial question of law. The commissioner has assessed the disability in accordance with the provisions of the Workmen's Compensation Act. We see no ground to interfere with the award.

Appeal fails, dismissed.

Sd/-

(J.B.KOSHY)

JUDGE

Sd/-

(V.GIRI)

JUDGE

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J.B.KOSHY & V. GIRI, JJ.

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M.F.A.No.631 of 2001

JUDGMENT

10th August, 2007.